

[AS REPORTED FROM THE GOVERNMENT ADMINISTRATION
COMMITTEE]

House of Representatives, 28 August 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 15 October 1991.

Words struck out are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Roger Maxwell

BUSINESS DEVELOPMENT BOARDS

ANALYSIS

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A BILL INTITULED

An Act—

- (a) To provide for the establishment of Business Development Boards; and**
- 5 **(b) To define the functions and powers of those Boards; and**
- (c) To provide for related matters**

BE IT ENACTED by the Parliament of New Zealand as follows:

No. 27—3

1. Short Title and commencement—(1) This Act may be cited as the Business Development Boards Act 1990.

Struck Out

(2) This Act shall come into force on the 1st day of September 1990.

5

2. Interpretation—In this Act, unless the context otherwise requires,—

“Board” means a Business Development Board established pursuant to section 4 of this Act:

“Crown agency” has the meaning given to it by section 2 (1) of the Public Finance Act 1989:

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Struck Out

“Department” has the meaning given to it by section 2 (1) of the State Sector Act 1988:

“Minister” means the Minister of Regional Development.

15

New

“Minister” means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

20

3. Act binds the Crown—This Act binds the Crown.

4. Establishment of Business Development Boards—

(1) The Governor-General may, from time to time, by Order in Council establish Boards called Business Development Boards.

25

(2) Each Board shall be established for a region that is specified, whether by reference to a map or otherwise, in the order.

(3) The Governor-General may from time to time, by Order in Council,—

30

(a) Dissolve a Board; or

(b) Change the region of a Board.

(4) Every Order in Council made under this section shall be published in the *Gazette*.

5 **5. Status of Boards**—(1) A Board is a body corporate with perpetual succession and a common seal, and has and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person.

(2) A Board is a Crown agency for the purposes of the Public Finance Act 1989.

10 (3) Notwithstanding section 1 ~~((3))~~ (3A) of the Public Finance Act 1989, Part V of that Act applies to a Board as if that Part of that Act were in force on the commencement of this Act.

6. Functions—The functions of each Board are—

15 (a) To advise the Minister on matters relating to business in the Board's region:

(b) To promote business growth in the Board's region by undertaking the activities specified in the ~~((charter))~~ code for the time being applying under **section 7** of this Act.

20 *Struck Out*

7. Charter—(1) The Minister shall prescribe a charter for the Boards.

(2) The charter shall specify—

25 (a) The goals of the Boards; and

(b) The activities Boards are to undertake; and

(c) The rules and guidelines applying to the operations of Boards.

(3) The Minister may from time to time by notice in writing given to the Boards—

30 (a) Amend the charter; or

(b) Revoke the charter and prescribe a new charter in its place.

(4) The Minister shall not—

35 (a) Prescribe the charter; or

(b) Amend the charter; or

(c) Revoke the charter and prescribe a new charter in its place—

unless the Minister first consults with the Boards.

Struck Out

(5) The Minister shall, as soon as practicable after prescribing or amending the charter,—

- (a) Publish the charter or the amendment, as the case may be, in the *Gazette*; and
- (b) Lay a copy of the charter or the amendment, as the case may be, before the House of Representatives.

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New

7. Code—(1) The Minister shall prescribe a single code for all Boards.

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(2) Subject to such variations as the Minister considers appropriate in the case of specified Boards, the code shall specify generally in relation to all Boards—

- (a) The goals of the Boards; and
- (b) The activities Boards are to undertake; and
- (c) The rules and guidelines applying to the operations of Boards.

15

(3) The Minister may from time to time by notice in writing given to the Boards—

- (a) Amend the code; or
- (b) Revoke the code and prescribe a new code in its place.

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(4) The Minister shall not—

- (a) Prescribe the code; or
- (b) Amend the code; or
- (c) Revoke the code and prescribe a new code in its place—

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unless the Minister first consults with the Boards.

(5) The Minister shall, as soon as practicable after prescribing or amending the code or revoking the code and prescribing a new code in its place,—

- (a) Publish the code or the amendment or the new code, as the case may be, in the *Gazette*; and
- (b) Lay a copy of the code or the amendment or the new code, as the case may be, before the House of Representatives.

30

Struck Out

8. Boards to follow charter and directions—(1) Each Board shall, in performing its functions and exercising its powers,—

- 5 (a) Seek to meet the goals specified in the charter; and
(b) Observe the rules and guidelines specified in the charter; and
(c) Give effect to any directions given to it in writing from time to time by the Minister.

10 (2) The Minister shall, as soon as practicable after giving a direction under **subsection (1) (c)** of this section,—

- (a) Publish a copy of the direction in the *Gazette*; and
(b) Lay a copy of the direction before the House of Representatives.

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Struck Out

New

8. Boards to follow charter—Each Board shall, in performing its functions and exercising its powers,—

- 20 (a) Seek to meet the goals specified in the charter; and
(b) Observe the rules and guidelines specified in the charter.

New

8. Boards to follow code—Each Board shall, in performing its functions and exercising its powers,—

- 25 (a) Seek to meet the goals specified in the code; and
(b) Observe the rules and guidelines specified in the code.

9. Boards to prepare statement of objectives—(1) For the purposes of section 41 of the Public Finance Act 1989, each Board shall, before the 31st day of January in each year, prepare—

- (a) A statement of objectives for the following financial year specifying the outputs to be produced by the Board and the financial performance to be achieved by the Board during the financial year; and
- (b) A list of the performance indicators that the Board considers will enable the preparation of a statement of service performance; and
- (c) A budget for the financial year.

(2) Subject to complying with the rules and guidelines specified in the ~~((charter))~~ code ~~(and any directions given to it by the Minister)~~, each Board shall carry out its functions and exercise its powers in accordance with the statement of objectives specified in **subsection (1)** of this section. 10

10. Powers of Boards—Each Board has powers that are reasonably necessary or expedient to enable it to carry out its functions. 15

11. Membership of Boards—(1) Each Board shall have not less than 4 and not more than ~~((10))~~ 7 members, who shall be appointed by the Minister.

Struck Out

20

(2) One member of each Board shall be appointed as Chairperson and another shall be appointed as Deputy Chairperson.

New

(2) One member of each Board shall be appointed by the Minister as Chairperson and another shall be appointed by the Minister as Deputy Chairperson. 25

(3) A member of a Board may hold that office concurrently with any other office.

12. Co-opted members—(1) For the purposes of any matter before it a Board may co-opt one or more persons whose qualifications or experience are likely, in the opinion of the Board, to be of assistance to the Board in dealing with that matter. 30

(2) Every person co-opted under this section for the purposes of a matter is entitled to take part in the Board's proceedings in relation to that matter, but is not entitled to vote.

5 (3) The failure by a person co-opted under this section to take part in the proceedings of a Board relating to a matter does not affect the validity of any meeting or other proceeding of the Board relating to that matter.

13. Disclosure of interests—(1) A member of a Board who, otherwise than as a member, is directly or indirectly
10 interested in the performance of any function or the exercise of any power by the Board, or who is directly or indirectly interested in any arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Board, as soon as practicable after the relevant facts have come
15 to the member's knowledge, shall,—

(a) If that person is the Chairperson, disclose the nature of the interest to the Minister:

(b) In any other case, disclose the nature of the interest to the Chairperson.

20 (2) A member of a Board who makes a disclosure under this section,—

(a) Shall not take part, after the disclosure, in any deliberation or decision of the Board relating to the performance of the function or the exercise of the
25 power or relating to the arrangement, agreement, or contract; and

(b) Shall be disregarded for the purpose of forming a quorum of the Board for that deliberation or decision.

14. Further provisions applying to Boards—The
30 provisions set out in the Schedule to this Act apply in respect of each Board.

15. Amendment to Ombudsmen Act 1975—Part II of the First Schedule to the Ombudsmen Act 1975 is hereby amended
35 by inserting, in its appropriate alphabetical order, the following item:

“Business Development Boards established pursuant to the Business Development Boards Act 1990”.

SCHEDULE

Section 14

PROVISIONS APPLYING IN RESPECT OF BUSINESS DEVELOPMENT BOARDS

Struck Out

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- 1. Term of office**—Every member of a Board—
- (a) Shall be appointed by notice published in the *Gazette*;
 - (b) Shall be appointed for a term not exceeding 3 years;
 - (c) Shall take office from the date of the notice of appointment or such later date as may be specified in the notice;
 - (d) Shall be eligible for reappointment for 1 further term not exceeding 3 years.
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New

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- 1. Term of office**—(1) Every member of a Board shall be appointed by notice published in the *Gazette*.
- (2) The member appointed as Chairperson shall be appointed for a term not exceeding 1 year and shall be eligible for reappointment as Chairperson for up to 3 further terms each term not exceeding 1 year.
- (3) Every other member of a Board shall be appointed for a term not exceeding 2 years and shall be eligible for reappointment for 1 further term not exceeding 2 years.
- (4) A Chairperson whose term of office has expired is not eligible for reappointment as a member of a Board.
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- 2. Continuation in office after term expires**—Notwithstanding **clause 1** of this Schedule, every member of a Board whose term of office has expired shall, unless sooner vacating office under **clause 3** of this Schedule, continue to hold office by virtue of the appointment for the term that has expired, until—
- (a) That member is reappointed; or
 - (b) A successor to that member is appointed; or
 - (c) That member is informed in writing by the Minister that the member is not to be reappointed and that a successor to that member is not to be appointed.

- 3. Extraordinary vacancies**—(1) A member of a Board may at any time be removed from office by the Minister for disability affecting the performance of his or her duties as a member, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (2) A member of a Board may at any time resign office by giving written notice to that effect to the Minister.
- (3) If a member of a Board dies, or resigns, or is removed from office, the vacancy created shall be deemed to be an extraordinary vacancy.
- (4) An extraordinary vacancy may be filled by the appointment of a person by the Minister.

SCHEDULE—*continued*

(5) A person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of a Board are not affected by a vacancy in its membership.

4. Meetings—(1) Meetings of a Board shall be held at times and places appointed by the Board or its Chairperson.

(2) At a meeting of a Board the quorum necessary for the transaction of business shall be,—

(a) If the Board has an even number of members, half the number of members; or

(b) If the Board has an odd number of members, a majority of the number of members,—

but in no case shall the quorum be fewer than 3 members.

5. Chairperson to preside at meetings—(1) The Chairperson shall preside at every meeting of the Board at which he or she is present.

(2) If the Chairperson is not present at the meeting, or if there is no Chairperson, the Deputy Chairperson, if present, shall preside.

(3) If neither the Chairperson nor the Deputy Chairperson is present at the meeting, or if there is no Chairperson and no Deputy Chairperson, the members present shall elect a member present to preside at the meeting, and the person elected shall have the functions and may exercise the powers of the Chairperson for the purposes of the meeting.

6. Voting at meetings—(1) All questions arising at a meeting of a Board shall be decided by a majority of the votes cast by the members present.

(2) The member presiding at any such meeting has a deliberative vote, and, in the case of an equality of votes, also has a casting vote.

(3) A resolution in writing signed, or assented to by letter or telegram or facsimile transmission or telex, by all members of a Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

7. Procedure—Subject to this Act, a Board may regulate its procedure in such manner as it thinks fit.

8. Committees—(1) A Board may from time to time appoint committees, consisting of 2 or more members of the Board and such other persons (if any) as the Board thinks fit,—

(a) To inquire into and report to the Board on those matters within the scope of its functions as are referred to them by the Board; or

(b) On behalf of the Board to perform any of its functions or exercise any of its powers—

and may from time to time delegate to a committee any function or power.

(2) Every committee appointed under this clause shall be subject to the control of the Board, and may at any time be discharged, altered, or reconstituted by the Board.

(3) Subject to any general or special directions given or conditions imposed by the Board, a committee to which a function or power is delegated under this clause may exercise that function or power in the

SCHEDULE—*continued*

same manner and with the same effect as if it had been conferred directly by this Act and not by delegation.

(4) A committee appearing to act pursuant to a delegation under this clause shall, until the contrary is proved, be presumed to be acting in accordance with the terms of the delegation.

9. Remuneration and travelling allowances—(1) The members of a Board, and the members of a committee appointed by a Board, shall be paid such fees, salaries, and allowances, and such travelling allowances and expenses, as the Board may from time to time determine with the approval of the Minister.

(2) A person co-opted under section 12 of this Act by a Board shall be paid such fees, salaries, and allowances, and such travelling allowances and expenses, as the Board may from time to time determine with the approval of the Minister.

10. Employees—(1) A Board may appoint those officers and employees, including officers and employees on secondment from other organisations, it thinks necessary for the efficient performance of its functions.

(2) Subject to the terms and conditions of employment, a Board may at any time terminate or suspend the employment of an officer or employee.

(3) ~~((Officers))~~ Subject to clause 10B of this Schedule, officers and employees appointed under subclause (1) of this clause shall be employed on terms and conditions of employment, and shall be paid salaries and allowances, determined by the Board from time to time after consultation with the State Services Commission.

(4) A determination under subclause (3) of this clause takes effect on a date (whether the date of the determination or an earlier or later date) specified in the determination.

(5) If no date is specified, the determination takes effect on the date of the determination.

New

10A. Transfer of employees—(1) The Secretary of Commerce may require any person who, immediately before the establishment of the Board, was employed in the Ministry of Commerce, and who was carrying out duties similar to those duties required to be carried out by employees of the Board, to accept appointment as an employee of the Board and, in any such case, the Board shall appoint that person as an employee and that person shall accept appointment accordingly.

(2) Before requiring a person to accept appointment as an employee of a Board under subclause (1) of this clause the Secretary of Commerce shall consult with the Board and the person about the proposed appointment.

(3) No such person shall be entitled to receive any payment or other benefit by reason of ceasing to be employed in the Ministry of Commerce.

10B. Protection of conditions of employment on transfer—
(1) Where a person is appointed as an employee of a Board under clause 10A of this Schedule, the conditions of employment of that person shall, until

SCHEDULE—*continued**New*

varied or until a new employment contract is entered into, be no less favourable than those that he or she was entitled to receive under the employment contract that applied to him or her immediately before appointment as an employee of the Board.

(2) Nothing in subclause (1) of this clause applies to a person who receives any subsequent appointment within the Board.

11. Personnel policy—(1) Each Board shall operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this clause, a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
 - (i) The aims and aspirations of Maori; and
 - (ii) The employment requirements of Maori; and
 - (iii) The need for greater involvement of Maori as employees of the employer operating the personnel policy; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and
- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

12. Equal employment opportunities programme—(1) Each Board—

- (a) Shall develop and publish in each year an equal employment opportunities programme;
- (b) Shall ensure in each year that the equal employment opportunities programme for that year is complied with.

(2) For the purposes of this clause and **clause 11** of this Schedule, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or any group of persons.

(3) Each Board shall include in its annual report a statement of the extent to which the Board’s equal employment opportunities programme for the year to which the report relates was complied with.

13. Superannuation or retiring allowances—

SCHEDULE—*continued**Struck Out*

(1) For the purpose of providing a superannuation fund or retiring allowance for officers or employees of a Board, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

New

(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees of a Board, sums by way of subsidy may from time to time be paid into any superannuation scheme which is registered under the Superannuation Schemes Act 1989.

(2) Notwithstanding anything in this Act, a person who, immediately before becoming an officer or employee of a Board, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to be an officer or employee of the Board; and that Act shall apply to that person in all respects as if that person's service as such an officer or employee were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** of this clause entitles a person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)** of this clause, to a person who is in the service of a Board as an officer or employee and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to that person, means that Board.

14. Application of certain Acts to members and employees—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as a member of a Board or by reason only of that person's employment under **clause 10** of this Schedule.

15. Funds of Boards—The funds of each Board consist of—

- (a) Money appropriated by Parliament for the purpose of the Board and paid to the Board for the purposes of the Board:

SCHEDULE—*continued*

(b) Other money lawfully received by the Board for the purposes of the Board:

(c) Accumulations of income derived from such money.

16. Bank accounts—(1) Each Board shall open at a bank or banks accounts necessary for the performance of its functions and the exercise of its powers.

(2) Money received by a Board, or by any employee of a Board, shall, as soon as practicable after it has been received, be paid into such bank accounts of the Board as the Board from time to time determines.

(3) The withdrawal or payment of money from an account shall be authorised in such a manner as the Board thinks fit.

17. Investment of money—Money that belongs to a Board and that is not immediately required for expenditure by the Board may be invested pursuant to section 25 of the Public Finance Act 1989.

18. Seal—The common seal of a Board shall be judicially noticed in all Courts and for all purposes.

19. Exemption from income tax—The income of a Board is exempt from income tax.

20. Annual report—(1) Each Board shall in each year furnish to the Minister a report on the operations of the Board in that year.

(2) Each Board shall include in the annual report the financial statements prepared by the Board, in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and the management statement relating to those financial statements.

(3) A copy of every annual report of a Board shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989.

21. Members not personally liable—No member of a Board is personally liable for an act or default done or made by the Board or by any member of the Board in good faith in the course of the operations of the Board.